

The exemption of a cemetery company is adversely affected by engaging in the operation of a crematorium.

Advice has been requested whether the status of a cemetery company exempt from Federal income tax under section 501(c)(13) of the Internal Revenue Code of 1954 is adversely affected where it establishes and operates a crematorium in the manner described below.

The organization was formed and operated for the purpose of providing and maintaining a cemetery. Its articles of incorporation were subsequently amended to enable it also to maintain and operate a crematorium, and it has operated in accordance with this amendment.

Section 501(c)(13) of the Code provides for the exemption from Federal income tax of cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporation chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Under these provisions, an organization claiming exemption under section 501(c)(13) of the Code may not engage in activities that are not necessary incidents to its burial purposes. To be a necessary incident to burial, an activity must be related to the procuring, sale, holding, and use of land solely as a burial ground. See Rev.Rul. 64-109, C.B. 1964-1 (Part 1), 190. The operation of a crematorium is not necessary to the procuring, sale, holding, and use of land solely as a burial ground.

Accordingly, it is held that the cemetery's exemption from Federal income under section 501(c)(13) of the Code is adversely affected by engaging in the operation of the crematorium.